
Table of Contents

CHAPTER 1: Understanding Domestic Abuse 1

- 1.1 Chapter Overview 1**
- 1.2 Defining Domestic Abuse 2**
- 1.3 Causes of Domestic Abuse 4**
 - A. The Environment of Violence 4
 - 1. The Perpetrator Has Learned to Abuse 4
 - 2. The Perpetrator Has Found the Opportunity to Abuse 5
 - 3. The Perpetrator Has Chosen to Abuse 5
 - B. Factors That May Accompany Domestic Violence 6
 - C. Illness-based Violence 8
- 1.4 Understanding the Abuser — The Potential for Lethality 8**
 - A. Characteristics of the Abuser 8
 - B. Lethality Factors 10
- 1.5 Abusive Tactics 12**
- 1.6 Living with Abuse 14**
 - A. Responses to Abuse 14
 - B. Coping and Survival Strategies 15
 - C. Survival and the Court System 18
 - 1. Coercion 19
 - 2. Uncertainty About the Court's Intervention 20
 - 3. Effects of a Criminal Conviction on the Family 21
 - D. Prosecutorial Discretion and the Absent Witness 22
- 1.7 Domestic Abuse and Children 23**
 - A. How Children Are Exposed to Adult Violence 23
 - 1. Witnessing the Violence 23
 - 2. Using Children to Maintain Control in the Adult Relationship 24
 - 3. Physical Consequences of Violence for Children 24
 - B. Effects of Adult Violence on Children 27
- 1.8 Chart — The Power and Control Wheel 29**

CHAPTER 2: Community Domestic Violence Resources 31

- 2.1 Statewide Agencies That Address Domestic Violence from the Perspective of Abused Individuals 31**
 - A. Michigan Domestic Violence Prevention and Treatment Board 32
 - B. The Michigan Coalition Against Domestic and Sexual Violence 33
 - C. Michigan Resource Center on Domestic and Sexual Violence 35

- 2.2 **Local Agencies That Address Domestic Violence from the Perspective of Abused Individuals 35**
 - A. Community Coordinating Councils 35
 - B. Domestic Violence Service Agencies 36
- 2.3 **Batterer Intervention Services 39**
- 2.4 **Characteristics of Safe, Effective Batterer Intervention Services Under the State-wide Standards 41**
 - A. Program Curriculum and Format 41
 - B. Contra-Indicated Interventions 42
 - C. Participant Rights 45
 - D. Communicating with the Court 46
 - E. Communicating with the Victim 46
- 2.5 **Cross-Cultural Communication 47**
- 2.6 **Ethical Concerns with Judicial Participation in a Coordinated Community Response 49**
 - A. Coordinated Response and the Code of Judicial Conduct 50
 - B. Disqualification for Personal Bias or Prejudice 54

CHAPTER 3: Common “Domestic Violence Crimes” 59

- 3.1 **Chapter Overview 59**
- 3.2 **Domestic Assault 60**
 - A. Elements of Offense; Penalties for First-Time Offenders 60
 - B. Enhanced Penalties for Repeat Offenders 61
 - C. Procedures for Seeking an Enhanced Sentence 61
 - D. Domestic Assault as a Lesser Included Offense 62
- 3.3 **Domestic Assault and Infliction of Serious Injury 63**
- 3.4 **Warrantless Arrest in Domestic Assault Cases 64**
- 3.5 **Parental Kidnapping 65**
 - A. Elements of Parental Kidnapping; Penalties 66
 - B. Defenses to Parental Kidnapping 67
- 3.6 **Deferred Sentencing for Domestic Assault and Parental Kidnapping 68**
 - A. Deferred Proceedings Under the Domestic Assault Statutes 69
 - B. Deferred Sentencing in Parental Kidnapping Cases 71
 - C. Deferred Sentencing and Local Ordinances 72
- 3.7 **Stalking Generally — Behavior Patterns and Legal Relief 73**
- 3.8 **Misdemeanor Stalking 74**
 - A. Elements of the Offense 74
 - B. Legitimate Purpose Defense to Stalking 75
 - C. Penalties for Misdemeanor Stalking 76
- 3.9 **Felony Aggravated Stalking 76**
 - A. Elements of Aggravated Stalking 76
 - B. Penalties for Aggravated Stalking 77
- 3.10 **Unlawful Posting of a Message Using an Electronic Medium of Communication 78**
- 3.11 **Procedural Issues in Criminal Stalking Cases 81**
 - A. Jury Instruction on Stalking 81
 - B. Sufficiency of Evidence 82
 - C. Disqualification of Judge 83
- 3.12 **Constitutional Questions Under the Criminal Stalking Statutes 83**
 - A. Double Jeopardy 83
 - 1. Successive Prosecution 83
 - 2. Multiple Punishments 84
 - B. Vagueness and Overbreadth 85
 - C. Statutory Presumptions 87

3.13 Other Crimes Commonly Associated with Domestic Violence 88

- A. Offenses Against Persons 88
 - 1. Assaults 88
 - 2. Child Abuse 89
 - 3. Extortion, Obstruction of Justice 90
 - 4. Homicide 90
 - 5. Injuries or Death Involving Firearms or Dangerous Weapons 91
 - 6. Kidnapping 92
 - 7. Criminal Sexual Conduct 92
 - 8. Mayhem 93
 - 9. Stalking 93
 - 10. Malicious Use of Mail or Telecommunications Services 93
- B. Property Offenses 94
 - 1. Cruelty to Animals 94
 - 2. Arson 94
 - 3. Breaking and Entering, Home Invasion 94
 - 4. Desertion and Non-support 95
 - 5. Malicious Destruction of Property 97
 - 6. Trespassing 97

3.14 A Note on Tort Remedies 97

- A. Civil Suit for Damages Resulting from Stalking 97
- B. Intentional Infliction of Emotional Distress 98
- C. Statute of Limitations 99

CHAPTER 4: Promoting Safety in Criminal Proceedings 101

4.1 Chapter Overview 101

4.2 Police Reports in Cases Involving Domestic Violence 102

4.3 Denial of Interim Bond for Misdemeanor Domestic Assault Defendants 103

4.4 Procedures for Issuing Conditional Release Orders 106

- A. Time to Impose Conditions 106
- B. Appointing Counsel for Defendant 107
- C. Required Findings by Judge or District Court Magistrate 108

4.5 Factors to Consider in Determining Bond Conditions 109

4.6 Contents of Conditional Release Orders 111

- A. Statutory and Court Rule Requirements 111
- B. Promoting Pretrial Safety in Cases Involving Allegations of Domestic Violence 112

4.7 LEIN Entry of Conditional Release Orders 117

4.8 Duration of Conditional Release Orders 117

4.9 Modification of Conditional Release Orders 118

- A. Modification of Release Orders in Felony Cases 118
- B. Modification of Release Orders in Misdemeanor Cases 119
- C. Requests for Modification by the Protected Individual 120
- D. LEIN Entry of Modified Release Order; Notice to Surety 121

4.10 Enforcement Proceedings After Warrantless Arrest for an Alleged Violation of a Release Condition 121

- A. Preparation of Complaint 122
- B. Availability of Interim Bond 123
- C. Hearing Procedures 123

4.11 Enforcement Proceedings Where the Defendant Has Not Been Arrested for the Alleged Violation 125

4.12 Forfeiture of Bond Where Defendant Violates a Release Condition 127

4.13 Denying Bond 127

- 4.14 Sentencing Domestic Violence Offenders 129**
 - A. Identifying and Assessing Domestic Violence Offenses 129
 - B. Choosing a Sentencing Option — Conditions of Probation 130
 - C. Batterer Intervention Services as a Condition of Probation 131
- 4.15 Monitoring Compliance with Conditions of Probation 133**
 - A. Obtaining Information 133
 - B. Enforcing Probation Violations 134
- 4.16 Victim Confidentiality Concerns and Court Records 134**
 - A. Felony Cases 135
 - B. Juvenile Delinquency Cases 135
 - C. Misdemeanor Cases 136
 - D. Name Changes 136

CHAPTER 5: Evidence in Criminal Domestic Violence Cases 137

- 5.1 Chapter Overview 137**
- 5.2 Former Testimony or Statements of Unavailable Witness 138**
 - A. Admissibility of Former Testimony Under MRE 804(b)(1) 138
 - B. Statements by Witnesses Unavailable by an Opponent 140
- 5.3 Audiotaped Evidence 140**
 - A. Authentication of Audiotaped Evidence 140
 - B. Hearsay Objections to Audiotaped Evidence 142
 - 1. Present Sense Impression Exception Under MRE 803(1) 142
 - 2. Excited Utterance Exception Under MRE 803(2) 143
 - 3. Dying Declarations Exception Under MRE 804(b)(2) 144
 - C. Exclusion of Audiotaped Evidence Under MRE 403 145
- 5.4 Photographic Evidence 146**
 - A. Authentication of Photographic Evidence 147
 - B. Relevancy Questions Under MRE 401 and 403 148
- 5.5 Business Records of Medical or Police Personnel 150**
 - A. Records of a Regularly Conducted Activity — MRE 803(6) 150
 - B. Public Records and Reports — MRE 803(8) 153
- 5.6 Statements Made for Purposes of Medical Treatment or Diagnosis 155**
 - A. Medical Relevance: Statements Identifying the Declarant's Assailant 156
 - B. Trustworthiness: Child Declarant 158
 - C. Trustworthiness: Statements to Psychologists 158
- 5.7 "Catch-All" Hearsay Exceptions 159**
- 5.8 Expert Testimony on Battering and Its Effects 160**
 - A. Criteria for Admitting Expert Testimony 160
 - B. Michigan Cases Addressing Evidence of Battering and Its Effects 162
- 5.9 Privileges Arising from a Marital Relationship 165**
 - A. Spousal Privilege 166
 - B. Confidential Communications Privilege 169
- 5.10 Privileged Communications with Medical or Mental Health Service Providers 171**
 - A. Sexual Assault or Domestic Violence Counselors 172
 - B. Social Workers 174
 - C. Psychologists or Psychiatrists 174
 - D. Records Kept Pursuant to the Juvenile Diversion Program 175
 - E. Physicians 175
 - F. Clergy 176
 - G. Abrogation of Privileges in Cases Involving Suspected Child Abuse or Neglect 177
 - H. Pretrial Discovery of Privileged Records in Felony Cases 177

-
- 5.11 Rape Shield Provisions 179**
 - A. Authorities Governing Admission of Evidence of Past Sexual Conduct 180
 - B. Illustrative Cases 182
 - 1. Nature of Admissible Evidence 182
 - 2. Evidence of Prior Sexual Conduct Involving the Defendant 183
 - 3. Evidence of Prior Sexual Conduct Involving a Person Other Than the Defendant 184
 - 4. Evidence of Complainant's Virginitv 185
 - C. Procedures Under MCL 750.520j(2); MSA 28.788(10)(2) 185
 - 1. Notice and Hearing Requirements 186
 - 2. Effect of Defendant's Violation of Notice Requirements 187
 - 5.12 Evidence of Other Crimes, Wrongs, or Acts Under MRE 404(b) 188**
 - A. Admissibility of Evidence Under MRE 404(b) 188
 - B. Procedure for Determining the Admissibility of Evidence of Other Crimes, Wrongs, or Acts; Limiting Instructions 189
 - C. Other Acts Evidence in Family Violence Cases 191
 - 5.13 Testimonial Evidence of Threats Against a Crime Victim or a Witness to a Crime 196**
 - A. Statements That Are Not Hearsay 196
 - B. Exceptions to the Hearsay Rule 198

CHAPTER 6: Issuing Personal Protection Orders — Statutory Overview 201

- 6.1 Chapter Overview 201**
- 6.2 Introduction to Personal Protection Orders 202**
 - A. The Role of Protection Orders in Combatting Domestic Violence 202
 - B. Development of Protection Orders in Michigan 203
 - C. Overview of Michigan's PPO Statutes 205
- 6.3 Domestic Relationship Personal Protection Orders Under MCL 600.2950; MSA 27A.2950 207**
 - A. Persons Who May Be Restrained 208
 - 1. Residents of the Petitioner's Household 208
 - 2. Mutual Orders Prohibited 209
 - B. Prohibited Conduct 209
 - C. Standard for Issuing a Domestic Relationship PPO 210
- 6.4 Non-domestic Stalking Personal Protection Orders Under MCL 600.2950a; MSA 27A.2950(1) 211**
 - A. Persons Who May Be Restrained 212
 - B. Petitioner May Not Be a Prisoner 212
 - C. Prohibited Conduct — Stalking and Aggravated Stalking 213
 - D. Standard for Issuing a Non-Domestic Stalking PPO 214
- 6.5 Procedures for Issuing PPOs 215**
 - A. Minors and Legally Incapacitated Individuals as Parties to a PPO Action 215
 - 1. Minors as Petitioners 216
 - 2. Minors as Respondents 216
 - B. Filing Requirements; Concurrent Proceedings 217
 - 1. Venue 217
 - 2. Filing Fee 217
 - 3. Distributing and Completing Forms 218
 - 4. Contents of the Petition 218
 - 5. Other Proceedings Prior to or Concurrent with PPO 219
 - 6. Assignment to Judge 220
 - C. Ex Parte Proceedings 221
 - D. Hearing Procedures 222
 - 1. Scheduling a Hearing 222
 - 2. Service of Notice of Hearing 222
 - 3. Making a Record 222
 - 4. Effect of a Party's Failure to Attend a Scheduled Hearing 223

- E. Required Provisions in a PPO 223
- F. Entry Into LEIN System 225
- G. Other Notices by the Clerk of the Court 226
- H. Service of the Petition and Order 227
- I. Appeal From Issuance or Denial of a PPO 228
- 6.6 Dismissal of a PPO Action 229**
 - A. Involuntary Dismissal 229
 - B. Voluntary Dismissal 230
- 6.7 Motion to Modify, Terminate, or Extend a PPO 231**
 - A. Time and Place to File Motion 231
 - 1. Petitioner's Motion to Modify or Terminate 231
 - 2. Petitioner's Motion to Extend the PPO 232
 - 3. Respondent's Motion to Modify or Terminate the PPO 232
 - B. Time to Hold Hearings 232
 - C. Service of Motion Papers 233
 - 1. Motion to Modify or Terminate a PPO 233
 - 2. Notice of Extension of a PPO 234
 - D. LEIN Entry 234
 - E. Appeals From Decisions on Motions to Terminate or Modify a PPO 234
- 6.8 A Word About Peace Bonds 235**

CHAPTER 7: Practical Considerations for Issuing Personal Protection Orders 237

- 7.1 Chapter Overview 237**
- 7.2 Making PPOs Accessible to Unrepresented Parties 238**
 - A. Explaining the Proceedings Clearly 238
 - B. Using Domestic Violence Service Agencies 239
 - C. Pro Bono Representation 241
 - D. Training for Court Staff 241
 - E. Conducting PPO Proceedings 242
 - F. Respondents Who Are Subject to Criminal Prosecution 242
- 7.3 Managing Ex Parte Proceedings 243**
- 7.4 Promoting Safety in PPO Provisions 245**
 - A. Give the Abused Individual All Available Legal Remedies 245
 - B. Fully Explain the Relief Provided in the Protection Order 246
 - 1. Descriptive Information 246
 - 2. Types of Contact Prohibited 247
 - 3. Access to Weapons 247
 - 4. To the Extent Permitted by Law, Access to Children of the Relationship 247
 - 5. To the Extent Permitted by Law, Financial Support for the Petitioner and Family Members 248
 - C. Protect Information Identifying the Petitioner's Whereabouts 249
 - 1. Addresses in Court Documents 249
 - 2. Protecting Addresses in Children's Records 249
 - 3. Name Changes 250
 - D. Avoid Civil Compromise 250
 - E. Mutual Orders 251
 - F. Do Not Order Counseling 252
- 7.5 Constitutional Concerns with Ex Parte Orders 252**
 - A. Due Process Concerns 252
 - B. The Right to Purchase and Possess Firearms 255

-
- 7.6 Common Frustrations with PPOs 255**
 - A. The Petitioner Resumes Contact with the Respondent 255
 - B. The Petitioner Abandons a PPO Proceeding 257
 - 1. Lack of Information or Confidence About Court Proceedings 257
 - 2. Belief the Abuse Has Stopped 257
 - 3. Coercion 258
 - C. Petitioners Who File Repeated Petitions 259
 - D. Parties Who Alter the PPO 260
 - 7.7 PPOs and Access to Children 260**
 - A. Authority to Regulate Access to Children in a PPO 262
 - B. Suggested Procedures for Cases Where a PPO Affects Access to Children 265

CHAPTER 8: Enforcing Personal Protection Orders 267

- 8.1 Chapter Overview 267**
- 8.2 Overview of PPO Enforcement Provisions 268**
- 8.3 Distinguishing Criminal and Civil Contempt 269**
 - A. Elements of Criminal Contempt 270
 - B. Elements of Civil Contempt 270
 - 1. Failure to Perform an Action Mandated by the Court 272
 - 2. Contemnor in Continuing Violation of a Court Order 272
- 8.4 Due Process in Contempt Proceedings Generally 272**
- 8.5 Initiating Criminal Contempt Proceedings by Warrantless Arrest 275**
 - A. Notice Prerequisites to Warrantless Arrest 275
 - B. Making a Warrantless Arrest Where the Notice Requirements Are Fulfilled 276
- 8.6 Pretrial Proceedings After Warrantless Arrest 277**
 - A. Jurisdiction to Conduct Contempt Proceedings 277
 - B. Time and Place for Arraignment 278
 - 1. Post-Arrest Proceedings Initiated in District Court 279
 - 2. Post-Arrest Proceedings Initiated in Circuit Court 279
 - C. Setting Bond in Circuit or District Court 281
 - D. Time for Holding a Hearing on the Charged Violation 281
 - E. Taking a Guilty Plea at Arraignment — Guilty Plea Script 283
- 8.7 Pretrial Procedures Where There Has Been No Arrest for an Alleged PPO Violation 284**
 - A. Place for Filing a Motion for an Order to Show Cause 284
 - B. Filing of Motion and Sufficiency of Affidavit 285
 - C. Service of a Motion and Order to Show Cause 286
 - D. Proceedings at Respondent's First Appearance; Setting the Matter for Hearing 286
- 8.8 Hearing on the Contempt Charges 288**
- 8.9 Sentencing for Contempt 288**
 - A. Sentencing for Criminal Contempt 289
 - 1. Applicability of Probation Statutes to Criminal Contempt Convictions 289
 - 2. Effect of Mandatory Sentencing Provisions 291
 - 3. Difficulties With Probationary Sentences for PPO Offenders 291
 - B. Jail Term and Fine in Civil Contempt Cases 292
 - C. Compensation for Actual Losses 292
 - D. Amendments to the PPO 293
- 8.10 Appeals From Conviction of Contempt 294**

8.11 Enforcement Proceedings Involving a Respondent Under Age 18 294

- A. Jurisdiction and Applicable Authorities 294
- B. Referee May Preside at Enforcement Proceedings 295
- C. Initiation of Proceedings — Overview 295
- D. Original Petitioner Initiates Proceeding by Filing a Supplemental Petition 296
 - 1. Apprehension of the Respondent 296
 - 2. Service of Supplemental Petition and Summons on Respondent 297
- E. Proceedings Initiated by Apprehension of Respondent Without a Court Order 298
- F. Preliminary Hearings 301
 - 1. Place for Preliminary Hearing 301
 - 2. Time for Preliminary Hearing 302
 - 3. Required Procedures at Preliminary Hearing 302
 - 4. Release of Respondent Subject to Conditions Pending Violation Hearing 304
 - 5. Detention Pending Violation Hearing 304
 - 6. Plea of Admission or No Contest 307
 - 7. Respondent Fails to Appear at Preliminary Hearing 307
- G. Violation Hearing 307
 - 1. Time for Hearing 307
 - 2. Role of Prosecuting Attorney at Violation Hearing 308
 - 3. Preliminary Matters 308
 - 4. Evidence and Burden of Proof 309
 - 5. Judicial Findings 309
- H. Dispositional Phase 309
 - 1. Time Limitations 309
 - 2. Conduct of Dispositional Hearing 310
- I. Dispositions 310
 - 1. Respondent 17 Years of Age or Older 310
 - 2. Respondent Under Age 17 311
 - 3. Dispositional Alternatives Under the Juvenile Code 311
 - 4. Orders for Reimbursement to the Court 313
 - 5. Orders for Restitution 314
 - 6. Supplemental Dispositions 314
- J. Appeals 314

8.12 Double Jeopardy and Contempt Proceedings 315

- A. Criminal Contempt Proceedings Trigger Double Jeopardy Protections — Civil Contempt Proceedings Do Not 315
- B. Criminal Contempt Proceedings Initiated by Private Parties May Trigger Double Jeopardy Protections 316
- C. The “Same Offense” — Michigan and Federal Principles 317
 - 1. Michigan’s Protection Against Successive Prosecution 317
 - 2. Michigan’s Protection Against Multiple Punishment 319
 - 3. United States v Dixon — the “Same Offense” in Federal Courts 320

8.13 Full Faith and Credit for Other Jurisdictions’ Protection Orders Under the Violence Against Women Act 321

- A. When Is a Protection Order Entitled to Full Faith and Credit? 322
 - 1. The Issuing Court “Has Jurisdiction Over the Parties and Matter” Under Its Own Law 323
 - 2. The Restrained Party Has Been Given “Reasonable Notice and Opportunity to Be Heard” 325
- B. What Types of Orders Are Entitled to Full Faith and Credit? 326
 - 1. Orders for Child Custody or Support 327
 - 2. Mutual Orders 328
- C. How Does the Enforcing Court Give Full Faith and Credit to a Sister State or Tribal Order? 329
- D. Facilitating Enforcement of Michigan PPOs in Other Jurisdictions 332

CHAPTER 9: Statutory Firearms Restrictions in Domestic Violence Cases 335

- 9.1 Chapter Overview 335**
- 9.2 Definitions 336**
- 9.3 Effect of Federal Firearms Provisions on State Law 337**
- 9.4 Michigan Restrictions That Apply Upon Indictment on Felony or Misdemeanor Charges 337**
 - A. Restrictions Applicable to License Applicants Upon Felony Indictment 337
 - B. Restrictions Applicable to Concealed Pistol License Holders Upon Felony or Misdemeanor Indictment 338
 - 1. Notice to Concealed Weapon Licensing Board 338
 - 2. Suspension of License 338
 - C. Exemptions from Licensing Restrictions 339
 - D. Criminal Liability for Violation of Licensing Restrictions 339
- 9.5 Restrictions Arising from Conviction of a Felony 340**
 - A. Federal Restrictions on the Purchase or Possession of Firearms or Ammunition by Convicted Felons 340
 - B. Michigan Restrictions on the Purchase or Possession of Firearms by Convicted Felons 342
 - C. Michigan Licensing Restrictions for Convicted Felons 343
- 9.6 Restrictions Upon Conviction of a Misdemeanor 344**
 - A. Federal Restrictions for Domestic Violence Misdemeanors 344
 - B. Michigan Restrictions Following a Misdemeanor Conviction 347
- 9.7 Restrictions Arising from Entry of a Court Order 349**
 - A. Federal Restrictions on Purchase or Possession of Firearms or Ammunition After Entry of a Court Order 350
 - B. Michigan Licensing Restrictions After Entry of a Court Order 352
 - 1. Restrictions on Obtaining a License to Purchase, Carry, or Transport a Pistol. 352
 - 2. Restrictions on Obtaining a License to Carry a Concealed Pistol 353
 - 3. LEIN Entry; Notice Requirements for Persons Subject to Disqualifying Court Orders 353
- 9.8 Court Orders Prohibiting Law Enforcement Officers from Purchasing or Possessing Firearms 354**
- 9.9 Michigan Restrictions on Concealed Weapons Applicable to Dangerous Individuals 355**
- 9.10 Seizure and Forfeiture of Firearms Under Michigan Law 356**
- 9.11 Chart: Summary of Federal and Michigan Statutory Firearms Restrictions 358**

CHAPTER 10: Case Management for Safety in Domestic Relations Cases 361

- 10.1 Chapter Overview 361**
- 10.2 Why Is It Important to Know Whether Domestic Violence Is Present in a Case? 362**
- 10.3 Strategies for Identifying Whether Domestic Violence Is at Issue 363**
 - A. Providing Information 363
 - B. Minimizing Contact Between the Parties 365
 - C. Information-Gathering Strategies 366
- 10.4 Confidentiality of Records Identifying the Whereabouts of Abused Individuals 367**
 - A. Confidentiality in Friend of the Court Records Generally 368
 - B. Complaint and Verified Statement 371
 - 1. Information That Must Be Disclosed 371
 - 2. Confidentiality of Information in the Verified Statement 372
 - C. Confidentiality of Information Disclosed in Responsive Pleadings, Motions, and Court Judgments or Orders 372
 - D. Address Information 373
 - E. Documents That Support Recommendations 374
 - F. Access to Children's Records 374
 - G. Confidentiality Requirements for Interstate Actions 375
 - H. Name Changes 376

- 10.5 Federal Information-Sharing Requirements 376**
- 10.6 Alternative Dispute Resolution in Cases Involving Domestic Violence 377**
 - A. General Concerns with Alternative Dispute Resolution 377
 - B. Authorities Governing Mediation in Cases Involving Domestic Violence 379
 - 1. Statutory Mediation Provisions for Child Custody and Parenting Time Disputes 379
 - 2. Court Rule Mediation Provisions 379
 - 3. Model Protocol for Domestic Violence and Child Abuse Screening 380
 - 4. Model State Code on Domestic and Family Violence 381
 - C. Provisions Addressing Domestic Violence in Domestic Relations Arbitration Statutes 382
- 10.7 Comparing Personal Protection Orders with Domestic Relations Orders Under MCR 3.207 384**
 - A. Persons Subject to the Court's Order 384
 - B. Conduct Subject to Regulation 385
 - C. Issuance of Order 386
 - D. Enforcement Proceedings 387

CHAPTER 11: Support 389

- 11.1 The Significance of Support in Cases Involving Domestic Violence 389**
- 11.2 The Effect of Abusive Conduct on Property Division, Spousal Support, and Child Support 390**
 - A. The Parties' Conduct as a Factor in Property Division 391
 - B. The Parties' Conduct as a Factor in Awarding Spousal Support 393
 - C. The Parties' Conduct as a Factor in Awarding Child Support 394
- 11.3 Promoting Safe Enforcement of Support Obligations 395**
 - A. Gathering Information 396
 - B. Providing Information 396
 - C. Safeguarding Confidentiality 397
 - D. Minimizing Contact Between the Parties 397
- 11.4 Federal Information-Sharing Requirements 399**
- 11.5 Public Assistance and Domestic Violence 403**
 - A. Eligibility Limits 403
 - B. Cooperation with State Child Support Agency in Locating Non-Custodial Parents 405
- 11.6 Recovery of Litigation Expenses 406**
- 11.7 Effect of Divorce Judgment on Subsequent Tort Remedies for Domestic Violence 408**
 - A. Res Judicata and Collateral Estoppel 409
 - B. Effect of Release Agreement in Property Settlement 412

CHAPTER 12: Domestic Violence and Access to Children 413

- 12.1 Chapter Overview 413**
- 12.2 Determining a Child's Best Interests in Custody Cases Involving Allegations of Domestic Violence 414**
 - A. Statutory Provisions 414
 - B. Principles for Weighing the Best Interest Factors 416
 - C. Applying Factor (k) — Domestic Violence 417
 - D. Applying Factor (j) — The "Friendly Parent" Factor 420
- 12.3 Criminal Sexual Conduct Precluding an Award of Custody 421**
- 12.4 Joint Custody 422**
 - A. Standard for Joint Custody Determinations 422
 - B. The Best Interests of the Child in Joint Custody Determinations 424
 - C. Parental Cooperation 425
 - D. Joint Custody Agreements 426

-
- 12.5 Modifying Michigan Custody Determinations 427**
 - A. Standard for Modification 427
 - 1. “Proper Cause” or “Change of Circumstances” 428
 - 2. Best Interest of the Child 428
 - B. PPOs and the Established Custodial Environment 430
 - 12.6 Change of Legal Residence 431**
 - 12.7 Parenting Time 433**
 - A. Domestic Violence as a Factor in Granting Parenting Time 433
 - B. Terms for Parenting Time 435
 - C. Sample Parenting Time Questionnaire 438
 - D. Examples of Specifically-Worded Parenting Time Terms 439
 - 12.8 Grounds for Denying Parenting Time 440**
 - A. Criminal Sexual Conduct by a Parent 440
 - B. Danger to the Child’s Physical, Mental, or Emotional Health 441
 - 12.9 Civil Remedies to Enforce Michigan Parenting Time Orders 441**
 - 12.10 Preventing Parental Abduction or Flight 444**
 - A. Risk Factors for Parental Abduction or Flight 445
 - B. Preventive Measures 446
 - 12.11 Resources for Locating Missing Children 448**

CHAPTER 13: Custody Proceedings Involving Multiple Jurisdictions 449

- 13.1 Chapter Overview 449**
- 13.2 Domestic Custody Proceedings Involving Multiple Jurisdictions — The Governing Law 449**
- 13.3 Does the Michigan Court Have Jurisdiction to Hear the Dispute? 451**
 - A. “Home State” Jurisdiction 452
 - B. “Significant Connection” Jurisdiction 453
 - C. “Emergency” Jurisdiction 454
 - D. “Last Resort” Jurisdiction 455
- 13.4 Has Another Court Properly Assumed Jurisdiction? 456**
 - A. Another Court Has Issued a Custody Determination and Continues to Have Jurisdiction 457
 - B. Modification of Another Court’s Order When It No Longer Has Jurisdiction or Declines to Exercise Jurisdiction 457
 - C. Simultaneous Proceedings Initiated in Michigan and Another Jurisdiction 459
- 13.5 Is Another Court a More Appropriate Forum? 460**
 - A. Inappropriate Forum 460
 - B. Reprehensible Conduct 461
- 13.6 Judicial Communication Under the UCCJA 462**
 - A. Simultaneous Proceedings in Other States 463
 - B. Determining the Most Appropriate Forum 463
- 13.7 Record-Keeping Requirements Under the UCCJA 464**
- 13.8 Gathering Evidence Safely From the Parties Under the UCCJA 465**
- 13.9 State and Federal Authorities Governing International Cases 466**
- 13.10 Applying the UCCJA to International Cases 466**
- 13.11 Applying the Hague Convention to International Cases 467**
 - A. Nations Where the Convention Applies 469
 - B. Children Who Are Subject to the Convention; Effect of Existing Custody Decrees 470
 - C. The Petitioner’s Burden of Proof in Actions to Secure the Return of a Child 470
 - 1. “Wrongful Removal” 470
 - 2. “Habitual Residence” 471
 - D. Exceptions to Return of a Child — The Respondent’s Burden of Proof 472

13.12 Domestic Violence as a Factor in Judicial Proceedings Under the Hague Convention 473

- A. Wrongful Taking or Retention 474
- B. “Habitual Residence” of the Child 475
- C. “Grave Risk” of Exposing the Child to Harm 476

13.13 Entering Orders That Minimize the Risk to the Child in Hague Convention Cases 479

APPENDIX A: Domestic Violence Agencies 481

APPENDIX B: Partial List of Culturally-Specific Resources for Survivors of Domestic Violence and Sexual Assault 485

APPENDIX C: Batterer Intervention Standards for the State of Michigan 487

APPENDIX D: Flow Charts: Issuing Personal Protection Orders with a Minor Respondent 503

APPENDIX E: Domestic Violence and Child Abuse/Neglect Screening for Domestic Relations Mediation 511

SUBJECT MATTER INDEX: 541